

Amended
WORK PLAN
FOR THE PESTICIDE ENFORCEMENT
COOPERATIVE AGREEMENT
FOR THE STATE OF NEW YORK

Federal Fiscal Year 2012
(October 1, 2011 Through September 30, 2012)

April 18, 2012

Division of Materials Management
New York State Department of Environmental Conservation
Albany, New York 12233-7250

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Goal 5: Enforcing Environmental Laws

Objective 5.1: Enforce Environmental Laws

This work plan is based on the Federal Fiscal Year (FFY) 2011-2013 Joint USEPA OPP/OECA State/Tribal Cooperative Agreement Guidance (the Guidance) and pertinent sections of earlier guidance.

This work plan addresses work to be accomplished with the funding provided under the Pesticide Enforcement Cooperative Agreement. Using federal work load factors in the Guidance, and the average annual salary of field staff executing work under this plan (approximately \$120,000, with fringe and indirect costs included), NYSDEC projects that federal funds combined with State matching funds would enable NYSDEC to accomplish the inspections and sampling collection/analysis accomplishments detailed in Table A on the last page of this work plan. The remainder of the funding would be allocated to certain other work elements under this plan, including those associated with administrative/legal/enforcement activities.¹

As demonstrated by the scope of this work plan, long-standing and more recently added work elements called for under the Guidance compete for the staffing supported under this Agreement. Because no additional funding is provided by USEPA, activities such as continued implementation of USEPA's container/containment regulations under federal credentials, must be supported solely by State resources outside of the Cooperative Agreements. As emphasized in previous work plans for this Agreement, most base elements cannot be fully accomplished with the existing level of support being provided. It is also not possible to accomplish the elements fully with already overtaxed State resources outside of the Agreement. NYSDEC's careful assessment of the work load under this Agreement highlights these factors as impacting the feasibility of managing, in any reasonable manner, the scope of work under this Agreement:

- increasing costs of government operations,
- the potential for reductions in staff,
- the potential for federal support to remain static or decrease (a trend of the past decade),
- the potential for the scope of work elements requested by USEPA to increase.

¹NOTE: If USEPA were to request NYSDEC to participate in additional work loads (e.g., special enforcement initiatives), this would likely utilize a portion of the staffing supported by the funding under this Agreement for existing elements under this work plan. NYSDEC would therefore need to reassess the staffing allocations of this work plan.

As a result, NYSDEC has endeavored to allocate resources under this Agreement to elements that will best serve the environmental stewardship of pesticides management and still be responsive to the most significant work elements requested by USEPA.

I. COMPLIANCE-ENFORCEMENT CORE PRIORITIES

A. PRIORITY 1 Reducing Chemical Risk

Based on the Guidance and consultations with USEPA Region II, the Department is choosing the following activity to conduct under this priority from the list of options in the Guidance. To the extent possible with resources available, NYSDEC will conduct inspections and take appropriate enforcement actions and/or perform related compliance assistance.

Container/Containment

Inspections of regulated entities involves: checking product labeling to ensure that proper rinsing and disposal directions are present; and inspecting refilling establishments: to ensure they meet container rule requirements and, if applicable, for secondary containment of stationary containers and mixing and loading pads. All inspections related to container/containment will be conducted under federal credentials.

Compliance monitoring activities will focus primarily at sites considered to be producer establishments, marketplaces, and dealers. These inspections will focus on compliance with labeling, container and containment requirements of the Rule as appropriate. Since New York is a state without prior equivalent containment regulations, focus will be on the secondary containment, container design and labeling requirements using federal or State credentials as appropriate during inspections. Inspections will be conducted to ensure that secondary containment has been constructed to meet the requirements of the rule, and that the containment is being maintained and records are kept in accordance with the rule.

During inspections, NYSDEC will determine if pesticide products released for shipment after August 17, 2011 have the proper labeling. NOTE: On the 5700 forms, these inspections will be reported as "Market Place" inspections and "Non-PEI Containment" inspections.

Prior to any container related inspections being conducted, the Department requests that USEPA Region II provide guidance and protocols for our inspectors so they may recognize business information that may be considered confidential (CBI) and appropriate ways to avoid inadvertent exposure to it.

B. PRIORITY 2 Protecting the Under Served and Vulnerable Populations

USEPA states in the Guidance that protecting vulnerable populations such as children, those with compromised immune systems, groups in rural and urban lower income areas, and agricultural workplaces from harmful pesticide exposure is a priority and that states need to target inspections in ethnic, rural and urban lower income areas.

Based on the Guidance and consultations with USEPA Region II, the Department is choosing the following activity to support this priority from the list of options offered in the Guidance.

Worker Protection Inspections

The Department will continue emphasis on Worker Protection inspections through agricultural use inspections consistent with the Guidance. It is USEPA's goal that the Worker Protection requirements help to create a safe work environment in which agricultural workers, their employers and pesticide handlers can perform tasks without concern about pesticide exposure. The Department will track each WPS inspection as either a Tier I or Tier II inspection.

II. WORK ACTIVITIES TO SUPPORT THE CORE PESTICIDE COMPLIANCE AND ENFORCEMENT PROGRAM

A. Core Program Activities

1. Producer Establishment Inspections (PEIs)

NYSDEC does not conduct PEIs, upon the advisement of USEPA Region II, that our State pesticide control specialists are not authorized to collect CBI under federal credentials. The ability to collect CBI is necessary to conduct PEIs.

The inspection and resource commitments under this work plan do not include PEIs. Any change in NYSDEC's ability to conduct PEIs will result in our reassessment of person years (PYs) apportioned under this work plan. Also, NYSDEC pesticide control specialists would need to be trained in conducting PEIs.

2. Dealer/distributor/retailer Inspections

NYSDEC will conduct these inspections, generally under state credentials, addressing product compliance as well as compliance with bulk repackaging/custom blending policy, and requirements for the sale of restricted use pesticides. Where appropriate, compliance with container/containment regulations will also be addressed--and will be done so using federal credentials.

3. E-Commerce

Support under this Agreement is dedicated to other essential pesticides enforcement work loads, and, although there may be an oversight need in the e-commerce area, the essentials of the program take priority. Therefore, we will be unable to assist in this area.

4. Misuse

NYSDEC will continue to address pesticide misuse at a level commensurate with this

Agreement, as, per the guidance, how it relates to WPS, food safety, structural pest control and drift. Any referrals from USEPA involving serious harm to humans or the environment would be tracked by NYSDEC as a §27 referral, and to that end, NYSDEC requests that USEPA Region II specifically identify any referral that requires tracking under FIFRA §27.

5. Pesticides Infrastructure

If USEPA makes additional funding available under this Cooperative Agreement or separately, NYSDEC pesticides program staff would participate in training such as Pesticide Inspector Residential Training (PIRT), Pesticide Regulatory Education Program (PREP), Case Development Training, and other training.

Regarding enhanced database development, which the Guidance calls upon USEPA Regions to strengthen, NYSDEC is in the planning stages for an enhancement of the Bureau of Pest Management's databases - to be supported by State funding. If and when implementation commences, it will be done gradually, with the database used for enforcement grant related data tracking tentatively scheduled to be last. If additional funding were made available by USEPA for this enhancement, the potential for greater progress with its implementation exists.

6. Compliance Assistance

The Department will continue to provide compliance assistance to the regulated community in the form of informational materials, presentations at trade/public meetings, educational events, and during discussions at inspections. When appropriate, we will refer members of the regulated community and general public to the Agricultural Compliance Center for information needs.

7. Cancellations, Suspensions, Other Major Regulatory Actions and National High Risk Initiatives

USEPA has not recently requested NYSDEC to assist them with implementing cancellation/suspension orders, by conducting inspections (and other compliance monitoring activities) in order to check compliance with major pesticide regulatory actions within time frames specified in the nationally-issued Compliance Monitoring Strategies (as discussed in the cooperative agreement guidance). If USEPA takes use actions such as these, NYSDEC would inform the registrants of the coming suspension/cancellation at the NYS level and suspend/cancel the product under NYS's Product Registration Program. We would notify our Regional pesticide control specialists of the action.

8. Import and Export Inspections

NYSDEC does not conduct import and export inspections, upon the advisement of USEPA Region II that our State pesticide control specialists are not authorized to collect CBI, which is necessary to conduct them. If USEPA confirms that NYSDEC pesticide control specialists are lawfully authorized to collect CBI and requests NYSDEC to conduct import and export inspections, the following would need to occur:

- NYSDEC would need to consider the feasibility of our involvement, reassess the work load under this Agreement/work plan and make adjustments accordingly.
- NYSDEC pesticide control specialists would have to be trained in conducting import and export inspections.
- Before it is possible for NYSDEC pesticides staff to conduct import or export inspections, internal Department authorization will need to be obtained to conduct them (potentially relating to NYSDEC's approach to national security concerns).
- Joint inspections would need to be conducted, with USEPA accompanying NYSDEC, until NYSDEC gains expertise in this area.

9. Section §18, §24(c), and Experimental Use Monitoring

The 2011-2013 Guidance calls for inclusion in this work plan of elements for each of the following: §18, §24(c), and Experimental Use. The elements include: a description of how the State plans to address monitoring and follow up to ensure compliance, and that the number of inspections to be conducted be negotiated with the USEPA Region. The description of NYSDEC's approach and inspection projection for these elements is summarized in Table A on the last page of this work plan.

10. Antimicrobial Pesticides

The Guidance tells states to expect a limited number of inspection requests from USEPA for antimicrobial products as follow up to their efficacy reviews. Unless additional federal resources are made available under this Agreement or unless other work loads under this Agreement are reduced, NYSDEC would not be able to conduct inspections targeted to antimicrobials.

11. Endangered Species (ES)

NYSDEC considered the ES elements of the Enforcement Guidance; we summarize them here and then provide our approach for this work plan.

State inspectors must collect and report to USEPA the following information to help the Pesticide Program determine the effectiveness of communication, outreach and educational activities for pesticide users:

- the number of use and for cause inspections where it could be determined that the pesticide product was labeled requiring the applicator to follow the pesticide use limitations and any applicable Endangered Species Protection Bulletins; and
- the number of use and for cause pesticide inspections where the pesticide applicator was alleged to be in violation of the Endangered Species labeling requirements, including any applicable Endangered Species Protection Bulletins.

NYSDEC recognizes the importance of ES in relation to pesticides. Routine inspections may include, if applicable, review in light of standard ES label statements. However, we do not plan

to conduct inspections incorporating elements for new ES label statements/bulletins or provide related reporting during FFY 2012 due to the following considerations:

- As of this writing, USEPA has not developed ES bulletins applicable to NYS. The Guidance states that this is an element upon which enforcement is dependent.
- There are no additional funds provided under this Agreement to set up and carry out an ES inspection and reporting program. Although USEPA calls for ES reporting under the Enforcement Cooperative Agreement, the specifics for that reporting (formula, etc.) are provided under the Pesticide Program Cooperative Agreement. That Agreement provides \$1,180 for the ES program in NYS (federal funds and State match). With that level of support, it is not fiscally possible to carry out the inspection and reporting activities called for under the two Guidances.

When USEPA issues ES statements on labels referencing Bulletins, we will reassess our approach and resources available to monitor compliance with those statements in NYS.

12. Container/Containment Inspections

The Department anticipates conducting containment inspections at facilities that are subject to the federal containment regulations. In addition, during marketplace, dealer, and refiller inspections, the Department will also be monitoring for compliance with container requirements. Federal credentials will be used, as appropriate, for these inspections. The numbers of containment inspections projected to be conducted by NYSDEC are reflected in Table A at the end of this work plan. In addition, further work plan details about Container/Containment inspections can be found on page 3 of this work plan.

As stated in the State's January 2008 residue removal program adequacy documentation to USEPA, for the purposes of checking refiller compliance, NYSDEC will conduct inspections, which include certain elements of pesticide establishment inspections (PEI) and market place inspections (MPI). The inspections will check refiller compliance with obtaining the residue removal procedure for refillable containers, keeping records of the procedure, cleaning refillable containers before repackaging pesticides into them (if necessary), and will be conducted using federal credentials. Given the narrow scope of residue removal requirements for which NYSDEC will inspect refillers, we do not anticipate the need to access CBI or utilize CBI-related components of a traditional PEI during those inspections. NOTE: For purposes of indicating these inspections on the 5700 forms, they will be reported as "Market Place" inspections and "Non-PEI Containment" inspections, unless otherwise directed.

13. Worker Protection Compliance and Enforcement Activities

NYSDEC will conduct Worker Protection Standard (WPS) inspections, as appropriate, in accordance with USEPA WPS Agricultural Inspection Guidance (Appendix 4C of the USEPA Guidance for this Cooperative Agreement). As shown in Table A at the end of this work plan, we project that, with resources provided under this Agreement, we will conduct 30 WPS

inspections during FFY 2012. We estimate that approximately 60% of those inspections will be Tier I and 40% will be Tier 2. We recognize USEPA's emphasis on the conduct of Tier I inspections and we will endeavor to conduct them, but the conduct of Tier I and timing of pesticide applications and related restricted entry intervals are unknown until the agricultural establishment is inspected.

NYSDEC will report on enforcement, if any, associated with WPS inspections projected to be conducted under this Agreement. In accordance with the guidance and, commensurate with federal funding for this work element, NYSDEC will, in regard to projected WPS inspections:

- provide, in our mid- and end-of-year reports, a narrative summary of significant enforcement actions resulting from projected WPS inspections, including those with significant monetary penalty,
- provide summary information on the number of other enforcement actions resulting from WPS inspections (e.g., stop sale orders, warning letters, etc.), and
- conduct inspections, as needed, at agricultural establishments subject to prior WPS enforcement.

New York State WPS Initiative

- If feasible, NYSDEC and EPA will jointly conduct Worker Protection Safety Inspections in New York State during FFY 2012.

B. Laboratory Funds

USEPA has amended the purpose of the small grant it provides on a rotating basis to State labs supporting pesticide monitoring and enforcement activities that was traditionally used for purchasing lab equipment. Those funds may now be used to support the pesticide monitoring and enforcement activities of the lab beyond the purchasing of equipment and the NYSDEC lab will explore use of these funds accordingly.

C. Optional Program Activities

In response to the Guidance encouraging states to participate in USEPA's Residue Check Sample Pilot Program, the NYSDEC Shared Laboratory Facility participates fully in the AAPCO Formulation Check Sample Program, and the AAPCO Residue Check Sample program, and will continue to do so.

III. INSPECTIONS, SAMPLE COLLECTION, AND QUALITY ASSURANCE ACTIVITIES

NOTE: Inspections and sampling are important parts of the program and we will continue to address it in the work plan. However, this subject has not been addressed in USEPA's Guidance for over 12 years. Therefore, we have consolidated this section in this work plan.

A. Inspections and Sample Collection

1. Inspections, Sampling and Sample Analyses

Types and numbers of inspections projected to be conducted by NYSDEC are reflected in the table at the end of this work plan. Based on federal work load factors for inspections and sample collection and analyses, the numbers of inspections to be conducted, and samples to be collected and analyzed under this work plan are those projected to be carried out with funding under this Cooperative Agreement. NYSDEC projects that, under this Agreement, the following will occur:

- 16 physical samples will be collected, and
- 26 sample analyses will be conducted.

2. Documentation of Inspections and Inspection Reports

Inspections, as included on the projection table at the end of the work plan, will be conducted in accordance with the procedures set forth in the USEPA, and NYSDEC Pesticides Inspector Manuals and other guidance such as the WPS inspection criteria. Proper documentation of those inspections (affidavits, maps, photos, etc.) will be prepared, as appropriate. Narrative reports will be prepared on inspections conducted under this Agreement, where violations are found, as specified in the applicable compliance monitoring strategies.

Reports for inspections conducted under this Agreement will be retained by the State for a period of at least six years, or until any associated enforcement cases are resolved and closed, if longer. Documents retained may be hard copy and/or electronic formats. These reports will be available for examination by USEPA.

B. Quality Assurance Program

NYSDEC Laboratory Status: In November 2010, a workforce reduction initiative resulted in a consolidation of certain programs. The NYSDEC Division of Air Resources (DAR) received the formerly separate NYSDEC Pesticide Laboratory staff and equipment at the beginning of 2011. DAR now operates its laboratory as a multi-Divisional support group, which includes pesticide analyses. Therefore, the NYSDEC continues to maintain its ability to provide pesticide analyses support for the Bureau of Pest Management. We now refer to the laboratory as the NYSDEC Shared Laboratory Facility.

1. Analytical Methods

Pesticide samples resulting from all categories of use surveillance will be analyzed by the NYSDEC Shared Laboratory Facility or by a laboratory under contract to the State of New York. Standard Association of Official Analytical Chemists (AOAC), USEPA's Manual of Chemical Methods for Pesticides and Devices (14th Ed.), the Collaborative International Pesticides Analytical Council (CIPAC) Limited Handbook, the FDA Pesticide Analytical Manual (PAM),

or any other methods provided and accepted by USEPA and specified levels of quality control, as used by USEPA, must be adhered to in every sample analysis procedure.

All routinely used in-house methods will be validated and documented. All samples involving violations or potential violations will be verified by procedures spelled out in the applicable pesticide product procedures manuals or as otherwise specified in the Quality Assurance Program Plan. Pesticide residue samples in support of misuse investigations may also be analyzed by the applicant's designated laboratory, using available Food and Drug Administration (FDA), USEPA, United States Geological Survey (USGS) or other accepted methods available in the scientific literature or by the pesticide industry. All reported results will be accompanied by appropriate quality control parameters so as to allow evaluation of precision, accuracy, freedom from interferences and confirmation of pesticide (or metabolite) identity.

2. Check Sample Program

The NYSDEC Shared Laboratory Facility participates fully in the AAPCO Formulation Check Sample Program, and the AAPCO Residue Check Sample program, and will continue to do so.

3. Back-Up Analysis

NYSDEC can request back-up analyses from approved laboratories, if necessary or as requested by USEPA Region II, if additional federal resources are provided. Examples where backup analysis could potentially be requested are:

- When NYSDEC believes it is necessary to have the results of an analysis verified, we will request an impartial or second analysis before initiating an enforcement action; or
- When NYSDEC requests that USEPA take the enforcement action and USEPA desires independent verification of our analysis; or
- A reference analysis is required due to conflicting results between the State and the regulated party.

4. Submission/Retention of Reports

Copies of all analytical reports, associated raw data and other necessary records for samples collected will be retained by NYSDEC and be available for examination by USEPA. The analytical reports must be retained by NYSDEC or the USEPA Regional Office until the associated enforcement cases are resolved and closed out.

5. Cross Contamination Screening

The NYSDEC analyzes food samples for enforcement purposes only. The NYS Agriculture and Markets laboratory analyzes food samples for tolerance limits. The tolerance analyses are not reported under this Agreement.

6. Training of Analytical Chemists and Inspectors

USEPA personnel will train NYSDEC pesticide program staff as needed. Using cooperative agreement or other funds, NYSDEC will avail itself of USEPA workshops, seminars and meetings on proper sample analytical procedures, instrumentation, methodology, and quality assurance. Inspections, chemistry analyses, case preparation and prosecution will be performed in accordance with USEPA procedures designed to assure sample integrity, chain-of-custody, use of standard methods of analysis, sufficiency and adequacy of the evidence, and administrative due process. NYSDEC will avail itself of USEPA training related to these areas, if such training is offered and funded by USEPA.

7. Provision of Enforcement Samples

NYSDEC will make a split sample available to any person from whom a sample was collected, if requested.

C. Assignments From USEPA Region II and Referral and Inspection Procedures Under FIFRA Sections 26 and 27

NYSDEC will respond to routine federal assignments, which are minor in nature and for which USEPA Region II requests, in writing, NYSDEC cooperation. NYSDEC will review the content of these requests and time frames for their completion, to assess whether they are appropriate and practical, and will discuss any related questions or concerns with USEPA Region II. (NOTE: NYSDEC advises that USEPA needs to communicate all requests for assistance or information from NYSDEC, whether needed from the Central Office or any of the NYSDEC Regional Offices, through the Central Office Bureau of Pest Management.)

The official response times for initiating and completing such USEPA assignments are shown below. However, various factors influence the amount of time needed for response. NYSDEC will communicate with USEPA Region II regarding any need for changes to these time frames in order to conduct proper investigations.

- Priority 1 Assignments: The initiating inspection will be conducted as soon as possible, but no later than 20 work days after receipt of the assignment. The preliminary inspection report will be submitted to USEPA Region II no later than 30 work days after receipt of the assignment. The final report will be submitted within 20 work days following conclusion of the investigation or receipt of laboratory results.
- Priority 2 Assignments: The initiating inspection will be conducted within 45 work days after receipt of the assignment. The final report will be submitted within 45 work days after initiating the investigation.

Section 27(a) of FIFRA requires USEPA to refer to the states any information the Agency receives indicating a significant violation of pesticide use laws. In accordance with the Final Interpretive Rule governing FIFRA Sections 26 and 27 (40 CFR Part 173), USEPA in consultation with NYSDEC, will annually identify, in writing, priority areas for formal referral

to the State. All pesticide use cases identified as significant will be referred to NYSDEC by USEPA Region II in writing as soon as possible, and will be formally tracked as set forth in the Final Interpretive Rule. The State will commence appropriate action within 30 work days after receipt of the referral. This period may be extended, after negotiation, if required by the procedural characteristics of the State regulatory structure or the complexity of the case. If NYSDEC has not reported on the investigative status within 30 work days of the date of referral, USEPA will contact NYSDEC to learn the results of the investigation and NYSDEC's intended enforcement response to any violations detected. If USEPA Region II determines that the NYSDEC's intended investigation and enforcement response to the violation is inappropriate, USEPA will first attempt to negotiate an appropriate NYSDEC response. If the NYSDEC is unwilling or unable to alter its original response, USEPA may bring its own enforcement action, after appropriate notice to NYSDEC. That written notice will summarize the facts relating to the NYSDEC response, discuss the reasons for USEPA's determination that the action is inadequate, and state that the USEPA will initiate its own enforcement action. USEPA Region II will not initiate an enforcement action sooner than 30 days after NYSDEC was notified. The NYSDEC, in consultation with the USEPA, may return the referral to USEPA for further action.

IV. ENFORCEMENT, CASE PREPARATION AND PROSECUTION

Enforcement actions reported will be those occurring in regard to the inspections conducted under this Agreement.

NYSDEC will be responsible for the quality and sufficiency of evidence gathered for inspection, laboratory, and investigatory activities, which NYSDEC performs under this Agreement. If NYSDEC determines, in regard to evidence found in association with an investigation conducted under this Agreement, that USEPA needs to be a party to an enforcement action, NYSDEC will refer the matter to USEPA. In regard to such a referred case, if requested by USEPA, files pertinent to USEPA's case will be made available to the designated USEPA Region II Case Review Officer.

V. REPORTING, ENFORCEMENT MEASURES, AND EVALUATIONS

A. Core Pesticide Enforcement Reporting and Evaluations

Work plan Commitments and their time frames are listed below:

| <i>Report</i> | <i>Due Dates for Reporting Per USEPA Guidance</i> |
|---------------------------|---------------------------------------------------|
| PART Measures | USEPA Regions submit to OC/AgD by December 31 |
| End-of-year Report | USEPA Regions submit to OECA by February 28 |
| 5700-33H | USEPA Regions enter data by October 30 |
| WPS 5700-33H | USEPA Regions submit data by December 31 |
| ES Inspection Report Form | USEPA Regions submit data by December 31 |

The text in the following bullets addresses items in the table above:

- Performance of activities by the NYSDEC Bureau of Pest Management under the Agreement will be monitored by the project officer in USEPA Region II and by the NYSDEC.
- Per agreement with USEPA Region II, NYSDEC will prepare and submit to USEPA Region II, within 30 work days following the end of the second quarter, a written mid-year report of activities conducted under this Agreement. Per the guidance, USEPA Region II will prepare and submit to NYSDEC a written mid-year evaluation of the performance of NYSDEC under the program. USEPA will conduct a mid-year evaluation meeting on-site at NYSDEC, if possible, or, at a minimum, through a conference call with NYSDEC. This meeting should be held within 30 days of NYSDEC's submittal of the mid-year report to USEPA Region II.
- NYSDEC will prepare and submit to USEPA Region II, within 90 work days following the end of the fourth quarter, an end-of-year report of activities performed under this Agreement. USEPA Region II will prepare and submit to NYSDEC an end-of-year evaluation reviewing the accomplishments of the program year. USEPA Region II will conduct an end-of-year evaluation meeting on-site at NYSDEC, within 30 days of NYSDEC's submittal of the end-of-year report to USEPA Region II.
- Per agreement with USEPA Region II: NYSDEC will report, on USEPA forms 5700-33H and WPS 5700-33H, total program accomplishments, not just the data on enforcement conducted by the staff supported under this Agreement as in previous years. At a minimum, the 5700-33H will be provided to USEPA Region II prior to the end of October 2012, since USEPA's due date for their regional offices to submit the 5700 data is by October 30. Also, per agreement with USEPA Region II, the WPS 5700-33H will be submitted to USEPA Region II with the mid- and end-of-year reports. NYSDEC will summarize, on the WPS 5700-33H, compliance and noncompliance from WPS inspections conducted under this Agreement.
- Per our agreement with USEPA Region II regarding USEPA Pesticide Enforcement Grant Outcome Measures: NYSDEC will report total program accomplishments for the measures: Repeat Violator, Complying Action, and Efficiency. NYSDEC will report these measures, on USEPA's forms for such, at the end-of-year point.

B. WPS Reporting

NYSDEC will provide USEPA Region II, with the mid- and end-of-year reports, a summary of WPS accomplishments achieved and enforcement/compliance conducted under this Agreement, including a completed USEPA form WPS 5700-33H and narrative reports of significant enforcement actions.

C. Endangered Species (ES) Reporting

The Guidance calls for states to summarize in the end-of-year report (on USEPA's ES Inspection

Report Form), "...compliance and noncompliance areas for all inspections where ES Bulletins are applicable...." This work element is also addressed in the Pesticides Program Cooperative Agreement. Please see item 2.A.11 of this document, regarding that NYSDEC will not be reporting ES Bulletin label inspections during FFY 2012.

D. PART and Performance Measure Template Reporting

Included in the Guidance is a requirement for reporting on the three enforcement measures (repeat violator, complying action, and efficiency), as part of the State Grant Performance Measure Template and entered by USEPA Regions into the Annual Commitment System. As per our agreement with USEPA Region II described above for the Grant Outcome Measures, NYSDEC will submit data at the end of the year for all three of the measures. NYSDEC will provide measures information by October 30. Please note that since the year ends September 30, NYSDEC gathers data and calculates the measures during the first half of October, so it would not be practical to submit the information to USEPA before late-October.

E. Container/Containment Reporting

NYSDEC will annually summarize specific areas of compliance and noncompliance from all container/containment inspections and report these at least annually at the End-of-Year evaluations utilizing the container/containment specific 5700-33H form to capture additional information on the most commonly violated portions of the container/containment rule. NOTE: Since NYSDEC does not conduct PEI inspections, we will report container/containment inspections on the standard 5700-33H form as Market Place inspections and on the container/containment specific 5700-33H form as "Non-PEI Containment" inspections.

F. Significant Incident Reporting

States are encouraged to report to USEPA Region II, incidents involving serious adverse effects involving workers, handlers, the public, and nontarget species. NYSDEC will assess whether there are resources available and need for such reporting (i.e., if there are any such incidents in NYS during FFY 2012).

VI. QUALITY MANAGEMENT PLANS (QMPs) AND QUALITY ASSURANCE PROJECT PLANS (QAPPs)

The Guidance calls for all applicants to submit a QMP, per USEPA requirements. NYSDEC submitted its QMP in 2001. An update of the QMP will be worked on during FFY 2012. The revised document will be submitted for USEPA review when it is completed. QAPPs will be provided, as called for under our QMP and general USEPA standards.

Inspections and Sampling Commitments are listed on the next page. The time frame to complete these commitments is September 30, 2012.

| TABLE A FFY 2012 PROJECTIONS FOR INSPECTIONS TO BE CONDUCTED AND SAMPLES TO BE TAKEN AND ANALYZED ² | |
|-------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------|
| INSPECTION TYPE/ SAMPLE COLLECTION/ SAMPLE ANALYSIS | PROJECTED NUMBER OF INSPECTIONS OR SAMPLES TO BE CONDUCTED |
| <i>Inspections</i> | |
| Agricultural Use for Cause ³ | 9 |
| Agricultural Use ² | 36 |
| WPS | 30 |
| Nonagricultural Use for Cause ² | 35 |
| Nonagricultural Use ² | 50 |
| Dealer Records | 8 |
| Certified Applicator Records | 65 |
| Experimental Use ² | 2 |
| Market Place | 42 |
| Containment | 2 |
| Residue Removal | 2 |
| TOTAL | 281 |
| <i>Samples</i> | |
| Collected (Physical Samples) | 16 |
| Analyzed (25 Residue + 1 Formulation) | 26 |

²This table reflects information for inspection and sampling supported under the FFY 2012 Pesticides Enforcement Cooperative Agreement. Federal work load factors, provided by USEPA Region II, for each inspection type, sample collection and analyses, were used in the calculation of the projected number of inspections, sample collections and sample analyses to be conducted. Also, the numbers of inspections to be conducted, by inspection type, are a best estimate. The number of inspections conducted in each category may be more or less than the number estimated on this table, based on program priorities and needs.

³Inspections with FIFRA §18 or 24, or EUP elements would be included primarily under these types of inspections, but could also be included under other inspection types.

